

STAFF REPORT

Proposed Amendments to Chapter 22, Belmont Municipal Code, Article V, Construction of Curbs and Gutters, Sections 22-61–22-80

Mayor and City Council of the City of Belmont
Belmont CA

Honorable Mayor and Council members:

Summary

The proposed amendments to Belmont Municipal Code Chapter 22, Article V, Construction of Curbs and Gutters, update the process for construction and repair of private curbs, gutters and sidewalks and the mechanism for cost recovery available to the City when it completes the construction or repair. These proposed amendments reflect the direction given by the City Council during a study session in January 2004.

Background and Discussion

In January this year, the City Council conducted a study session to review the City's sidewalk policy. As a result of that session, direction was given to revise the City's Municipal Code sections regarding sidewalks.

To implement the City Council's direction, the Public Works Director and City Attorney have prepared proposed revisions to Chapter 22, Streets and Sidewalks, Article V, Construction of Curbs and Gutters. The proposed revisions are, by this staff report, presented to the City Council for introduction.

The Article contains:

1. Provisions for initiation of new sidewalk construction and a protest process for property owners (See §22-63–22-71).
2. Provisions for initiation of repair work and a protest process for property owners (See §22-72).

3. A collection and lien procedure for recovery of costs incurred by the City when property owners do not construct or repair sidewalks after notice to construct or repair (See §22-74–22-82).

The proposed ordinance reads as follows. All deleted text is shown in ~~strikeout~~ and new proposed text is shown in **bold** for the City Council's consideration.

CHAPTER 22 STREETS AND SIDEWALKS

ARTICLE V. CONSTRUCTION **AND REPAIR** OF CURBS, ~~AND~~ GUTTERS **AND SIDEWALKS**

Sec. 22-61. Scope of this article; definitions.

- (a) This article shall not apply to construction of curbs, ~~and~~ gutters **and sidewalks** for new building construction ~~and~~ development or to maintenance of existing curbs, ~~and~~ gutters.
- (b) *Block* means property facing one (1) side of any street between the next intersecting streets or between the terminus of a dedicated right-of-way of a street and an intersecting street. *Street* does not include an alley or other right-of-way unless it is of the same width as a regular residential minimum width street. In the case of an alley, *block* means property facing both sides of any alley between the next intersecting streets or alleys, or between the terminus of an alley and an intersecting street.
- (c) *Cost* and *construction cost* or variants thereof, means and includes both the actual cost of construction of the work, design and inspection and incidental expenses, as defined in this article.
- (d) ***Sidewalk* shall include all portions of a parking strip maintained in the area between the property line and the street line and also includes curbs, gutters, bulkheads, retaining walls or other works for the protection of any sidewalks or of any such parking strip.**
- (e) ***A tripping hazard* on a sidewalk shall be any vertical displacement greater than or equal to one-half inch (½").**

Sec. 22-62. Duty to construct, **maintain or repair**.

(a) **Adjacent property owners are responsible for the construction, maintenance and repair of the sidewalk adjacent to or fronting on any portion of their property. Owners required by this article to construct, repair or maintain any portion of a sidewalk shall owe a duty to members of the general public, including travelers on the sidewalk, to construct, repair or maintain the sidewalk in a safe and secure condition. It shall be a violation of this Article for owners to fail to perform the duties and obligations established by this article or to perform such duties and obligations in a negligent manner. If any person suffers personal injury or damage to property, as a result of the failure of owners to construct or maintain any sidewalk in a safe and secure condition as required by this article, the adjacent property owners shall be directly liable to such person for the resulting injury or damages, and no liability shall attach to the city for such injury or damages.**

(b) ~~A duty to construct or cause the~~ **Construction or repair of curbs, and gutters and sidewalks in front of their properties shall arise occur when:**

~~(a)~~ (1) ~~When~~ The director of public works or his/her designee finds that curbs, and gutters **and sidewalks** have been constructed, or that their construction has been guaranteed to his satisfaction, in front of properties constituting more than fifty (50) percent of the frontage in any block; or

~~(b)~~ (2) Where a petition signed by the owners of more than sixty (60) percent of the front footage of the block has been filed with the city clerk requesting the installation of such improvements; or

~~(c)~~ (3) Whenever the city council of the city upon its own motion has ordered the installation of such improvements.

(4) **The director of public works or his/her designee determines that any portion of the sidewalk contains a tripping hazard, is out of repair, pending reconstruction, in a condition to endanger persons or property, or in a condition to interfere with public convenience in the use of the sidewalks.**

Sec. 22-63. ~~Notice~~ **Duty to construct sidewalks.**

(a) The director of public works or his/her designee shall, upon the instructions of the city council, notify the owners or persons in possession of the property fronting on that portion of the street in such block in which no curbs, ~~and~~ gutters **and sidewalks** have been constructed theretofore, to construct or cause to be constructed curbs, ~~and~~ gutters **and sidewalks** ~~in front of adjacent to or fronting on his or her~~ **their** property. The city shall also notify the owners or persons in possession that ~~he/she~~ **they** shall be entitled to a fifty (50) percent cost reimbursement, based on city cost estimates, if the work is part of a city-sponsored project undertaken at the council's direction. No reimbursement shall be paid if the work is undertaken pursuant to an owner initiated petition to the city.

(b) Notice to construct may be given by delivering a written notice personally to the owners or to the persons in possession of the property ~~facing~~ **adjacent to or fronting** upon the curbs, ~~and~~ gutters **and sidewalks** to be constructed or by mailing a postal card, postage prepaid, to the persons in possession of such property, or to the owners thereof at ~~his~~ **their** last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the persons owning such property as shown in the records of the office of the city clerk.

(c) The postal card shall contain a notice to construct the curbs, ~~and~~ gutters **and sidewalks** as the case may be, and the director of public works or his/her designee shall, immediately upon the mailing of the notice, cause a copy thereof, to be posted in a conspicuous place on the property.

(d) The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the construction and shall further specify that if the construction is not commenced within ~~sixty~~ **thirty** (~~60~~ **30**) days after notice is given and diligently and without interruption prosecuted to completion within thirty (30) days of commencement, the director of public works or his/her designee shall cause the construction to be done. However, upon petition by all of the affected property owners, the ~~sixty~~ **thirty** (~~60~~ **30**) day period may be waived and the director of public works or his/her designee may immediately cause the construction to be done.

(e) **Encroachment permit fees shall be waived if property**

owners construct the curbs, gutters and sidewalk in response to the notice required by this Section.

Sec. 22-64. Construction by city.

If the construction is not commenced within ~~sixty~~ **thirty** (~~60~~ **30**) days and prosecuted to completion with due diligence within thirty (30) days thereafter, as required by the notice or by the city council after the hearing required by this article, the city shall forthwith construct the curbs, ~~and~~ gutters **and sidewalks**.

Sec. 22-65. Time and place of hearing on objections or protests to construction.

The notice **to construct** shall also specify the day, hour, and place when the city council will hear and pass upon objections or protests, if any, which may be raised by ~~any~~ property owners or other interested persons, but in no case shall the hearing be sooner than ten (10) days after giving notice. Upon the day and hour fixed for the hearing, the city council shall hear and pass upon objections or protests in accordance with this article.

Sec. 22-66. Protests.

At any time not later than the hour set for hearing objections to the proposed work, ~~any~~ owners of property liable to be assessed for the work may make written protest against the proposed work or against the extent of the district to be assessed, or against any agreement entered into pursuant to this article. Such protest must be in writing, must contain a description of the property in which each signer thereof is interested, sufficient to identify the same and, if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property. All such protests shall be delivered to the clerk, and no other protests or objections shall be considered.

Sec. 22-67. Hearing; adjournment; withdrawal of protest.

At the time set for hearing protests the city council shall proceed to hear and pass upon all protests so made and its decision shall be final and conclusive. The city council may adjourn the hearings from time to time. Any such protest may be withdrawn by the owner making the same, in writing, at any time prior to the

conclusion of said protest hearing or any such adjournment thereof.
Sec. 22-68. Continuation of hearing; referral of protests; report and recommendation of director of public works or his/her designee; action by city council.

In lieu of hearing and passing upon protests, the city council may continue the hearing of protests to a day certain and refer the protests to the director of public works or his/her designee for investigation, report and recommendation as to the improvement and matters included in the protests. The report and recommendation of the director of public works or his/her designee shall be in writing, and a copy thereof shall be mailed not less than five (5) days prior to the continued hearing date for protests to each person owning property liable to be assessed who has made a written protest. At the time set for the continued hearing the city council shall hear and pass upon the report and recommendation of the director of public works or his/her designee and its decision shall be final. The city council may adjourn the hearing from time to time. Protests may be withdrawn in writing signed by the owner.

Sec. 22-69. Majority protest; overruling protest; finality of determination.

If the protest is against the proposed work and the city council finds that the protest is made by the owners of more than fifty (50) percent of the property to be assessed for the improvements, and protests are not withdrawn so as to reduce the same to less than a majority, no further proceedings shall be taken for a period of one (1) year from the date of the decision of the city council on the hearing, unless the protests are overruled by an affirmative vote of four-fifths of the members of the city council finding that the public health and safety require that the improvements be made. The determination of the city council shall be final and conclusive.

Sec. 22-70. Determination of ownership.

If it shall be necessary, in order to find whether a majority protest exists, to determine whether any or all of the signers of written protests are the owners of property to be assessed, the city council shall make such determination from the last equalized assessment roll, any written evidence submitted with a written protest and any other evidence received at the hearing. The city council shall be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership shall be

final and conclusive.

Sec. 22-71. Jurisdiction to order work done.

If no protests or objections in writing have been delivered to the clerk up to the hour set for the hearing thereon or if protests have been found by the city council to be insufficient, or have been overruled, or if protests against the extent of the proposed district have been heard and denied, immediately thereupon the city council shall acquire jurisdiction to order the proposed work to be done.

Sec. 22-72. Duty to repair or remove sidewalks.

(a) When any portion of the sidewalk contains a tripping hazard, is out of repair, pending reconstruction, in a condition to endanger persons or property or in a condition to interfere with the public convenience in the use of such sidewalk, the director of public works or his/her designee shall notify the owner or person in possession of the property adjacent to or fronting on that portion of sidewalk so out of repair, to repair or remove the curbs, gutters and sidewalk.

(b) If the director of public works or his/her designee determines there is no public benefit to the repair of the sidewalk, the adjacent property owner or person in possession of the property adjacent to or fronting on the sidewalk will be notified to remove the sidewalk and grade to match the adjacent street or property.

(c) Notice to repair or remove may be given by delivering a written notice personally to the owners or to the persons in possession of the property adjacent to or fronting upon the curbs, gutters and sidewalks to be repaired or removed or by mailing a postal card, postage prepaid, to the persons in possession of such property, or to the owners thereof at their last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the persons owning such property as shown in the records of the office of the city clerk.

(d) The postal card shall contain a notice to repair or remove the curbs, gutters and sidewalks as the case may be, and the director of public works or his/her designee shall, immediately upon the mailing of the notice, cause a copy

thereof, to be posted in a conspicuous place on the property.

(e) The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the repair or removal and shall further specify that if the repair or removal is not commenced within thirty (30) days after notice is given and diligently and without interruption prosecuted to completion within thirty (30) days of commencement, the director of public works or his/her designee shall cause the repair or removal to be done.

(f) Encroachment permit fees shall be waived if property owners repair or remove the curbs, gutters and sidewalk in response to the notice required by this Section.

Sec. 22-73. Exceptions.

The Redevelopment Agency shall be responsible for the maintenance and repair of any special pavement treatments installed as part of any city sponsored project within the area covered by the Downtown Design Guidelines enumerated in the Downtown Specific Plan.

Sec. ~~22-72~~ 22-74. Report following completion of construction repair or removal; contents.

Upon the completion of the construction **repair or removal**, the director of public works or his/her designee shall prepare and file with the city council a report specifying the work which has been done, the cost of ~~construction work~~, a description of the real property in front of which the work has been done and the assessment against each lot or parcel of land proposed to be levied to pay the cost or portion thereof. The report may include work done in front of any number of parcels of property, whether contiguous to each other or not. In determining the amount of the assessment against each lot or parcel of land, the ~~superintendent~~ **director of public works or his/her designee** shall assess the same portion of the total cost of the work against each lot or parcel as that parcel will receive of the total benefit from the work.

Sec. ~~22-73~~ 22-75. Notice of cost; service; contents; time for hearing.

(a) Upon the completion of the construction, **repair or**

removal, the city shall cause notice of the cost of the construction, **repair or removal** be given in the manner specified in this article for the giving of notice to construct, **repair or remove**, which notice shall specify the day, hour and place when the city council will hear and pass upon a report by the director of public works or his/her designee of the cost of the ~~construction work~~, together with any objections or protests, if any, which may be raised by ~~any~~ property owners liable to be assessed for the cost of such ~~construction work~~ and any other interested persons. In no case shall the hearing provided for in this section be sooner than ten (10) days after giving of notice.

(b) The cost of the ~~construction work~~ may include a proportionate share, as determined by the city council, of the cost of improvements constructed in a place other than in front of a parcel of property which ~~are~~ **is** required for the proper functioning of the improvements in front of the parcel.

Sec. ~~22-74~~ **22-76**. Hearing on report; confirmation; finality of decision.

Upon the day and hour fixed for the hearing the city council shall hear and pass upon the report of the director of public works or his/her designee, together with any objections or protests which may be raised by any of the property owners liable to be assessed for such construction, **repair or removal** and any other interested persons. Thereupon the city council may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The city council may adjourn the hearings from time to time. The decisions of the city council on all protests and objections which may be made, shall be final and conclusive.

Sec. ~~22-75~~ **22-77**. Assessment of cost; lien **for construction, repair or removal**.

(a) The assessments proposed by the director of public works or his/her designee pursuant to this article, as may be amended by the city council during the hearing held pursuant to this article, may be confirmed and levied by the city council against the parcels of property ~~front~~ **adjacent to or fronting** upon the **sidewalk**, curbs and gutters so constructed, **repaired or removed**, and the cost so assessed, if not paid within thirty (30) days after its confirmation

by the city council, shall constitute a special assessment against each of those parcels, and shall be a lien on the property for the amount thereof from the time of recordation of the notice of lien, which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.

Sec. ~~22-76~~ 22-78. Notice of lien; form; filing.

The director of public works or his/her designee may file in the office of the county recorder of the county in which the parcel of property is located, a certificate substantially in the following form, to wit:

Notice of Lien

Pursuant to the authority vested in me by Belmont Municipal Code Chapter 22, Article V, on the _____ day of _____, ~~19 20~~____, curb, ~~and gutter~~ **and sidewalk** work was completed and the City Council of said City did, on the _____ day of _____, ~~19 20~~____, by Resolution Number _____ assess the cost of such ~~construction work~~ upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said City, does hereby claim a lien on said real property in the sum of _____ dollars (\$ _____), and the same shall be a lien upon said real property until the said sum, with interest at the rate of _____ percent (insert rate of interest as fixed by the City Council, not to exceed 7 percent) per annum, from the said _____ day of _____, ~~19 20~~____ (insert date of the thirty-first day after confirmation of assessment), has been paid in full and discharged of record.

The real property hereinbefore mentioned and upon which a lien is claimed, is that certain piece or parcel of land lying and being in the City of Belmont, the County of San Mateo, State of California, and particularly described as follows, to wit:

(Description of Property)

Dated this _____ day of _____, ~~19~~

Director of Public Works

Sec. ~~22-77~~ **22-79**. Effect of recording notice; consolidation of claims; statute of limitations; foreclosure of lien.

From and after the date of the recording of the notice of lien, all persons shall be deemed to have had notice of the contents thereof. The notice of lien may include claims against one (1) or more separate parcels of property, whether contiguous or not, together with the amount due, respectively, from each such parcel. The statute of limitations shall not run against the right of the city to enforce the payment of the lien. If any such lien is not paid the city may file and maintain an action to foreclose such lien in the same manner and under the same procedure, so far as applicable, as that under which delinquent bonds are foreclosed.

Sec. ~~22-78~~ **22-80**. Alternative method of collection; inclusion of claim in next regular tax bill; notice of lien; collection.

As an alternative method of collection of the amount of the lien, the city council, after confirmation of the report of the director of public works or his/her designee, may order the notice of lien to be turned over to the ~~accounting officer and the tax collector of the city~~ **finance director**, whereupon it shall be the duty of ~~those officers~~ **the finance director or his/her designee** to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land. If ~~city~~ taxes are collected by the county officials, the notice of lien shall be delivered to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

Sec. ~~22-79~~ **22-81**. Time and manner of collection; penalties; interest; foreclosure.

Thereafter the amount of the lien shall be collected at the same time and in the same manner as ~~ordinary city~~ **property** taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ~~ordinary city~~ **property** taxes. All laws applicable to the levy, collection and enforcement of ~~city taxes and county~~ **property** taxes are hereby made applicable to such special assessment taxes.

Sec. ~~22-80~~ 22-82. Payment of assessments; annual installments; interest.

The city council shall have the power, in its discretion, to determine that the payment of such assessments of fifty dollars (\$50.00) or more may be made in annual installments, in any event not to exceed ten (10) and that the payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the city council, not to exceed seven (7) percent per annum. Said interest shall begin to run on the thirty-first day after the confirmation of the assessments by the city council. All such determinations may be expressed by resolution of the city council at any time prior to the confirmation of the assessments.

Fiscal Impact

None.

Recommendation

Staff recommends that the City Council introduce the ordinance and schedule the matter for second reading at the April 13, 2004 City Council meeting.

Alternatives

1. Instruct that no changes be made to Chapter 22, Article V.
2. Provide alternate language to be included in Chapter 22, Article V.

Public Contact

This matter was placed on the agenda and posted as required by the California Government Code.

Attachments

1. Belmont Municipal Code Chapter 22, Article V

Respectfully submitted,

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City Attorney